

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Meade County Communications, Inc.)	Facility ID No. 40928
Licensee of Station WMMG-FM)	NAL/Acct. No. MB-200741410015
Brandenburg, Kentucky)	FRN: 0003762333
)	File No. BRH-20050412AAX

FORFEITURE ORDER

Adopted: June 2, 2009

Released: June 3, 2009

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000), to Meade County Communications, Inc. (“Licensee”), licensee of Station WMMG-FM, Brandenburg, Kentucky (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (the “Rules”) by failing to timely file a license renewal application, and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”) by engaging in unauthorized operation of the Station after its authorization had expired.¹

II. BACKGROUND

2. On January 31, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) to Licensee in the amount of seven thousand dollars (\$7000) for these violations.² Licensee filed a Request for Cancellation or Reduction of Proposed Forfeiture (“Request”) on March 5, 2007.

3. Licensee’s renewal application for the Station for the current license term should have been filed by April 1, 2004, four months prior to the August 1, 2004, expiration date.³ Commission records show that Licensee did not tender its renewal application until April 12, 2005, more than eight months after the Station’s license expired, and it did not seek Special Temporary Authority (“STA”) to continue Station operations pending consideration of the late-filed renewal application. On January 31, 2007, the staff advised Licensee of its apparent liability for a forfeiture of \$7,000 for failure to timely file the Station’s renewal application and for unauthorized operation of Station WMMG-FM.⁴ In response, Licensee filed the subject Request.

4. In support of its Request, Licensee states that a reduction or cancellation of the forfeiture is warranted because: (1) its failure to file properly the renewal application was inadvertent; (2) it voluntarily disclosed the violation; (3) the forfeiture amount would create a “terrible financial burden” on

¹ 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

² *Meade County Communications, Inc.*, Memorandum Opinion and Order and Order of Apparent Liability for Forfeiture, 22 FCC Rcd 1577 (MB 2007).

³ See 47 C.F.R. §§ 73.1020, 73.3539(a).

⁴ The Commission also granted the Station’s license renewal application on January 31, 2007.

the Station; and (4) it has a history of compliance. Licensee asserts these reasons warrant a cancellation or reduction of the assessed forfeiture.

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and the Commission's *Forfeiture Policy Statement*.⁷ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁸

6. Licensee does not dispute that it failed to timely file a renewal application for Station WMMG-FM, but states that this violation was unintentional. Licensee states that it attempted to file on March 31, 2004, and believed it had done so successfully because it had successfully filed an AM Station license renewal application on that same day.⁹ As the Commission has held, violations resulting from inadvertent error are willful violations.¹⁰ In the context of a forfeiture action, "willful" does not require a finding that the rule violation was intentional. Rather, the term "willful" means that the violator knew that it was taking (or in this case, not taking) the action in question, irrespective of any intent to violate the Rules.¹¹

7. Licensee also contends that its inadvertent failure to file may have been a result of Commission error.¹² However, Licensee fails to provide any evidence that the Commission was responsible for its failure to timely file its renewal application.¹³ Moreover, while Commission records indicate that Licensee's AM Station renewal was filed on March 31, 2004, the Commission has no record of receiving a renewal application for Station WMMG-FM until April 12, 2005.

8. Licensee next asserts that a reduction or cancellation of the forfeiture is warranted because it took corrective action and voluntarily disclosed its failure to renew its authorization.¹⁴ While

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ Request at 1.

¹⁰ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

¹¹ See *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error); *Southern California*, 6 FCC Rcd at 4387. See also *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

¹² See Request at 2 ("I really would rather not file electronically because of the potential complications such as this."); ("This error was not intentional and may not have even been our fault.").

¹³ See *Union-Carolina Broadcasting Co.*, Letter, 22 FCC Rcd 14017, 14018 (2007) (rejecting assertion that Commission was in error when no specific evidence of error was shown).

¹⁴ Request at 1.

we recognize Licensee's efforts, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.¹⁵

9. Regarding Licensee's claim of financial hardship, the Commission will not consider reducing or cancelling a forfeiture in response to inability to pay unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflect the licensee's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹⁶ In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. We recognize that, in some cases, other financial indicators, such as net losses, may also be relevant.¹⁷ If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.¹⁸ Here, Licensee has provided us with federal tax returns for the years 2003, 2004, and 2005. These returns show gross revenues of over \$235,000 for each year, and expenditures that show a small profit for 2003 and 2005, and a small loss in 2004. Based on Licensee's financial documentation, we note that a \$7,000 forfeiture is less than three percent of its annual total gross revenues.¹⁹ We therefore believe that the gross revenues are sufficiently great when compared to the forfeiture amount such that the mere fact that the Station may have experienced an operating loss does not demonstrate that Licensee cannot afford to pay the forfeiture amount.

10. Finally, Licensee contends that its history of compliance merits a reduction or cancellation of the forfeiture amount. We disagree that Licensee has a history of compliance. During the license term, Licensee was subject to a forfeiture in the amount of three thousand dollars (\$3,000) for violation of the Rules.²⁰ Accordingly, we cannot find that Licensee's history of compliance warrants reduction or cancellation of the forfeiture amount.

11. We have considered Licensee's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully²¹ violated

¹⁵ *Pittman Broadcasting Services, L.L.C.*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). See also *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709, 9714 (MMB 1999) (stating that neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)).

¹⁶ See *Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7441 (2004).

¹⁷ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992) ("*PJB Communications*").

¹⁸ *Id.*

¹⁹ See *id.* (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues). See also *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641 (EB 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues; *Afton Communications Corporation*, Memorandum Opinion and Order, 7 FCC Rcd 6741, 6742 (CCB 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

²⁰ *Meade County Communications, Inc.*, Forfeiture Order, 19 FCC Rcd 1020 (EB 2004) (\$3,000 Forfeiture issued for violation of 47 C.F.R. § 17.4(a)(2)).

²¹ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California*, 6 FCC Rcd at 4387-88.

Section 73.3539 of the Rules and willfully and repeatedly²² violated Section 301 of the Act,²³ and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,²⁴ that Meade County Communications, Inc., SHALL FORFEIT to the United States the sum of seven thousand dollars (\$7,000) for willfully violating Section 73.3539 of the Commission's Rules and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²⁵ Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).²⁶

14. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail, Return Receipt Requested, and by First Class Mail to: Meade County Communications, Inc., c/o Michelle Ray, P.O. Box 505, Brandenburg, Kentucky, 40108.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²² Section 312(f)(2) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

²³ 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

²⁴ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

²⁵ 47 U.S.C. § 504(a).

²⁶ *See* 47 C.F.R. § 1.1914.